

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BCG, INC. and CHESAPEAKE PRODUCTS &  
SERVICES, INC.,

Plaintiffs,

v.

GLEs, INC., d/b/a SWEET OIL COMPANY,

Defendant/Third-Party  
Plaintiff,

v.

SUNOCO, INC.,

Third-Party  
Defendant.

C.A. No. 07-cv-207 (GMS)

TRIAL BY JURY OF TWELVE  
DEMANDED

**PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE  
TESTIMONY AND REPORT OF ROBERT A. SANDERSON, CPA**

Plaintiffs move *in limine* and pursuant to Fed. R. Evid. 702 to exclude the testimony and report of Robert A. Sanderson, CPA. For reasons set forth below, the motion should be granted.

Defendant GLeS, Inc. t/a Sweet Oil Company (hereinafter "Sweet Oil") has identified Robert A. Sanderson as an expert witness, and provided a purported expert report dated February 21, 2008 (the "Sanderson Report"). The Sanderson Report is attached as Exhibit "A".

Mr. Sanderson's proposed testimony and the Sanderson Report should be excluded pursuant to Fed. R. Evid. 702. Mr. Sanderson's "opinion" consists of the following:

I have read the attached summary of deliveries, average margins and calculation of damages (the report) prepared by the management of GLeS, Inc. in regard to Laurel Oasis Citgo and Doughboys Mobile's [sic] supply contract with Sweet Oil. I compared the delivery information and average margins in the report with the accounting records of GLeS, Inc. and tested the

report's calculations for accuracy. I found no discrepancies between the books and records of GLeS, Inc. and the report and found all calculations to be accurate.

Thus, Mr. Sanderson offers nothing but his opinion of the truth of Sweet Oil's own damage calculation. Indeed, Sweet Oil's representative, Mark Greco, testified at deposition that he (Mr. Greco) prepared the damage estimate. *See* Exhibit "B", Greco Deposition, pp. 85-86.

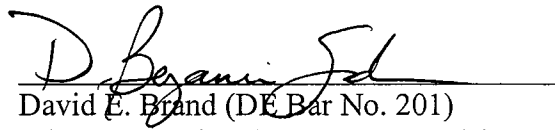
Under Fed. R. Evid. 702, expert testimony may be offered where such testimony will "assist the trier of fact to understand the evidence or to determine a fact in issue."<sup>1</sup> The proffered evidence here is not helpful to the jury in "understanding" anything. Rather, it is offered solely to bolster credibility of the work performed by Sweet Oil itself. The proposed testimony and report invades the province of the jury and should be excluded. *See, e.g., DeJaegger Construction, Inc. v. Schleining*, 938 F. Supp. 446, 449 (W.D. Mich. 1996) (stating that "expert testimony is not needed to determine whether a declarant or witness is telling the truth").

WHEREFORE, Plaintiffs respectfully request that the Court exclude the testimony of Mr. Sanderson and his report from evidence at trial. A proposed form of order is attached as Exhibit "C".

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<sup>1</sup> While "helpfulness is the touchstone of Rule 702," *Breidor v. Sears, Roebuck & Co.*, 722 F.2d 1134, 1139 (3d Cir.1984), and the helpfulness standard is to be interpreted broadly, *American Technology Resources v. United States*, 893 F.2d 651, 655 (3d Cir.), *cert. denied*, 495 U.S. 933, 110 S.Ct. 2176, 109 L.Ed.2d 505 (1990), the proposed testimony of Mr. Sanderson will not be "helpful" to the jury at all. The jury is quite capable to make its own determination of whether Sweet Oil's own damage analysis is accurate.

PRICKETT, JONES & ELLIOTT, P.A.

A handwritten signature in dark ink, appearing to read "D. Brand", is written over a horizontal line.

David E. Brand (DE Bar No. 201)

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*and*

Harry C. Storm

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Date: August 11, 2008

*Attorneys for the Plaintiffs*

# **EXHIBIT A**

**SANDERSON &  
ASSOCIATES, P.A.**  
CERTIFIED PUBLIC ACCOUNTANTS

February 21, 2008

Hugh Hutchinson, Esq.  
Leonard, Sciollo, Hutchinson & Tinari, LLP  
1515 Market Street, Suite 1800  
Philadelphia, PA 19102

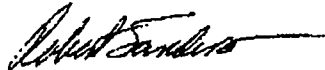
Gentlemen:

I am the outside certified public accountant for GLeS, Inc t/a Sweet Oil Company and have consulted and advised in that capacity for approximately eight years. In providing these services I have acquired a significant knowledge of their businesses and their operations.

I have read the attached summary of deliveries, average margins and calculation of damages (the report) prepared by the management of GLeS, Inc. in regard to Laurel Oasis Citgo and Doughboys Mobile's supply contract with Sweet Oil. I compared the delivery information and average margins in the report with the accounting records of GLeS, Inc. and tested the report's calculations for accuracy. I found no discrepancies between the books and records of GLeS, Inc. and the report and found all calculations to be accurate.

I am a graduate of the University of Delaware with a bachelors degree in accounting and I am certified in Delaware and Pennsylvania and licensed in Delaware. Previous employment includes: Arthur Young, Gunnip & Company, Sanderson, Thompson Ratledge & Zimny and CBIZ Inc. I have been advising small businesses and their owners for over 30 years.

Thank You



Robert A. Sanderson, CPA



## Sweet Oil Company deliveries in gallons

2005		January	February	March	April
Laurel Oasis Citgo	ULR	0	0	0	0
3759 Sussex Highway	ULM	0	0	0	0
Laurel, DE 19956	ULT	0	0	0	0
	LSD	0	0	0	0
Sussex County	KERO	0	0	0	0
	MONTHLY TOTALS	0	0	0	0
Doughboys Mobil	ULR	0	0	0	0
Rt.13	ULM	0	0	0	0
Delmar, MD 21875	ULT	0	0	0	0
Wicomico County	LSD	0	0	0	0
	KERO	0	0	0	0
	MONTHLY TOTALS	0	0	0	0
2006		January	February	March	April
Laurel Oasis Citgo	ULR	28604	33606	38107	40804
3759 Sussex Highway	ULM	0	0	0	0
Laurel, DE 19956	ULT	0	1100	3000	7101
	LSD	100326	111722	142267	120597
Sussex County	KERO	0	0	0	0
	MONTHLY TOTALS	128930	146428	183374	168502
Doughboys Mobil	ULR	84315	82130	94334	90862
Rt.13	ULM	0	0	0	0
Delmar, MD 21875	ULT	3904	6504	5801	5506
Wicomico County	LSD	28997	25307	30607	29411
	KERO	0	0	0	0
	MONTHLY TOTALS	117216	113941	130742	125779
2007		January	February	March	April
Laurel Oasis Citgo	ULR	0	0	0	0
3759 Sussex Highway	ULM	0	0	0	0
Laurel, DE 19956	ULT	0	0	0	0
	LSD	0	0	0	0
Sussex County	KERO	0	0	0	0
	MONTHLY TOTALS	0	0	0	0
Doughboys Mobil	ULR	86961	21114	0	0

<b>Rt.13</b>	ULM	0	0	0	0
<b>Delmar, MD 21875</b>	ULT	6703	2600	0	0
<b>Wicomico County</b>	LSD	23806	2400	0	0
	KERO	0	0	0	0
	MONTHLY TOTALS	117470	26114	0	0

May	June	July	August	September	October
0	0	0	0	48784	45557
0	0	0	0	0	0
0	0	0	0	7880	1900
0	0	0	0	118420	123818
0	0	0	0	0	0
0	0	0	0	175084	171275
0	0	0	0	100517	96710
0	0	0	0	0	0
0	0	0	0	6203	5502
0	0	0	0	23101	17804
0	0	0	0	0	0
0	0	0	0	129821	120016

May	June	July	August	September	October
40199	33299	10799	0	0	0
0	0	0	0	0	0
1400	2801	0	0	0	0
132393	143009	38105	0	0	0
0	0	0	0	0	0
173992	179109	48904	0	0	0
102943	89502	126620	133073	69228	53712
0	0	0	0	0	0
5305	6596	9221	8712	5982	3404
28807	17403	20106	23703	15406	17200
0	0	0	0	0	0
137055	113501	155947	165488	90616	74316

[illegible]



0	0	0	0	0	0
0	0	0	0	0	0
0	0	0	0	0	0
0	0	0	0	0	0
0	0	0	0	0	0

November	December	Total
34514	35206	164061
0	0	0
4101	7292	21173
131892	111606	485736
0	0	0
170507	154104	670970
80835	83483	361545
0	0	0
5800	6904	24409
30103	29113	100121
0	0	0
116738	119500	486075

0	0	0
0	0	9303
0	0	26206
0	0	0
0	0	143584

## Sweet Oil estimate of damages

## Average Volumes during time dealer honored contracts

Pen Oil assign to Sweet Oil  
September 2005

	<u>Total Purchases</u>	<u>Months purchased</u>	<u>Ave purchases mo</u>	<u>Months due but not honored</u>
Laurel Oasis Citgo 3759 Sussex Highway Laurel, DE 19956	1,700,209	11	154,564	18 Term date January 31, 2008
Doughboys Mobil Rt.13 Delmar, MD 21875	2,068,480	18	114,916	61 Term date March 1, 2012

	<u>Average Margin over term honored</u>	<u>Ave Margin times months not honored times ave gals</u>	<u>Equipment Recapture in Contract per Month</u>	<u>Recapture times Months not Honored</u>
Laurel Oasis Citgo 3759 Sussex Highway Laurel, DE 19956	\$ 0.02925	\$ 81,378.19	\$ 948.53	\$ 17,073.54
Doughboys Mobil Rt.13 Delmar, MD 21875	\$ 0.01667	\$ 116,854.18	\$ -	\$ -

Damages = Loss profits on anticipated gallons + Recapture of Equipment

Laurel Oasis Citgo 3759 Sussex Highway Laurel, DE 19956	\$ 98,451.73
Doughboys Mobil Rt.13 Delmar, MD 21875	\$ 116,854.18

Total Amount Due	\$ 215,305.91
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# EXHIBIT B

Mark Greco

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1 system and he got the average margins, and so is that  
2 part of what's in Exhibit 75?

3 A. I don't know that it actually calculates it  
4 down to a cents per gallon in this data.

5 Q. In 75?

6 A. This is a report that we generated at your  
7 request. This isn't what he used for his report.

8 He had access to this and additional  
9 information within our accounting system.

10 Q. So tell me what he used to calculate this  
11 average margin?

12 A. Let me take a look in here real quick.

13 I don't know that I could say  
14 specifically what he did to validate his numbers. I  
15 can tell you what I did to get my numbers. I mean he  
16 spent hours and hours going through the accounting  
17 system to establish his verification.

18 Q. Did you provide him with what you thought the  
19 average margin was?

20 A. I provided him with this attached spreadsheet  
21 in No. 13.

22 Q. You did provide him, then, with the page  
23 that's the last page of this exhibit?

24 A. Yes.



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Mark Greco

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1 Q. That at the top says Sweet Oil Estimate of  
2 Damages?

3 A. Yes.

4 Q. That was a document that Mark Greco prepared?

5 A. Yes.

6 Q. And all Sanderson did was review that and say,  
7 "Yep, it looks accurate"?

8 MR. HUTCHISON: Objection.

9 THE WITNESS: I don't know what his  
10 procedure was to establish it, but I know he spent  
11 quite a long time going through our system before he  
12 came up with that conclusion.

13 BY MR. STORM:

14 Q. But this page, this last page of Exhibit 13 --  
15 and I'm just trying to understand who prepared this  
16 page. If I understand your testimony, it is Mark Greco  
17 prepared this?

18 A. Yes.

19 Q. And then Sanderson reviewed it and determined  
20 that it was accurate?

21 A. Yes.

22 Q. So tell me this process of determining the  
23 average margin, what you look at to get that?

24 A. We look at what our costs were and what our



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# EXHIBIT C



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SERVICES, INC.,

Plaintiffs,

v.

GLS, INC., d/b/a SWEET OIL COMPANY,

Defendant/Third-Party  
Plaintiff,

v.

SUNOCO, INC.,

Third-Party  
Defendant.

C.A. No. 07-cv-207 (GMS)

TRIAL BY JURY OF TWELVE  
DEMANDED

**ORDER**

HAVING CONSIDERED the Motion in *Limine* to Exclude Testimony and  
Report of Robert A. Sanderson, C.P.A. filed by Plaintiffs in the above-caption action;

NOW THEREFORE, on this \_\_\_\_\_ day of \_\_\_\_\_, 2008,

IT IS HEREBY ORDERED that:

- 1) the testimony of Robert A. Sanderson, C.P.A. is precluded from trial;  
and
- 2) the Report of Robert A. Sanderson, C.P.A. is excluded from evidence at  
trial.

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CHIEF JUDGE,  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

BCG, INC. and CHESAPEAKE  
PRODUCTS & SERVICES,

Plaintiffs,

v.

GLES, INC., d/b/a SWEET OIL  
COMPANY

Defendant/Third-Party  
Plaintiff,

v.

SUNOCO, INC.,

Third-Party  
Defendant

C.A. No. 07-cv-207(GMS)

TRIAL BY JURY  
OF TWELVE DEMANDED

**CERTIFICATE OF SERVICE**

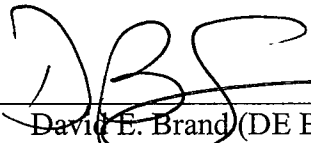
I, D. Benjamin Snyder, hereby certify that on this 11th day of August, 2008, I caused to be electronically filed a true and correct copy of the **PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF ROBERT A. SANDERSON, CPA** with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Seth J. Reidenberg, Esquire Young, Conaway, Stargatt & Taylor, LLP The Brandywine Building 1000 West Street, 17 <sup>th</sup> Floor P.O. Box 391 Wilmington DE 19899-0391	Matthew A. Kaplan, Esquire Pepper Hamilton, LLP Hercules Plaza, Suite 5100 1313 Market Street P.O. Box 1709 Wilmington DE 19899-1709

Hugh J. Hutchinson, Esquire Leonard, Sciolla, Hutchinson, Leonard & Tinari, LLP 1515 Market Street, 18th Floor Philadelphia, PA 19102	A. Christopher Young, Esquire Pepper Hamilton, LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103-2799

I further certify that on this 11th day of August, 2008, I caused a copy of the foregoing **PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF ROBERT A. SANDERSON, CPA** to be served by U.S. Mail, postage prepaid, to the above-listed counsel of record.

**PRICKETT, JONES & ELLIOTT, P.A.**

By:   
David E. Brand (DE Bar No. 201)  
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*Attorneys for the Plaintiffs*

DATED: August 11, 2008